

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - LAW DIVISION**

POWER, ROGERS & SMITH, a  
Illinois Professional Corporation,

Plaintiff,

v.

EAGAN AVENATTI, LLP, a California  
Limited Liability Partnership f/k/a EAGAN  
O'MALLEY & AVENATTI, LLP;  
MICHAEL J. AVENATTI, Individually,

Defendants.

No.

**JURY DEMANDED**

**COMPLAINT AT LAW**

Plaintiff POWER ROGERS & SMITH, a Illinois Professional Corporation, hereby complaining against Defendants EAGAN AVENATTI, LLP, a California Limited Liability Partnership f/k/a EAGAN O'MALLEY & AVENATTI, LLP; and MICHAEL J. AVENATTI, Individually, pleading hypothetically and in the alternative, states as follows:

**General Allegations**

1. At all times herein mentioned, Plaintiff POWER ROGERS & SMITH (hereinafter referred to as "PRS") is an Illinois professional corporation, with its principal place of business located in Cook County, State of Illinois.
2. At all times herein mentioned, Plaintiff PRS has been engaged in the practice of law.
3. Plaintiff PRS is informed, believes and thereon alleges that at all times herein mentioned that Defendant EAGAN AVENATTI, LLP f/k/a EAGAN O'MALLEY & AVENATTI, LLP (hereinafter referred to as "EA") is a California limited liability partnership, with its principal place of business located in the County of Orange, State of California.
4. At all times herein mentioned, Defendant EA has been engaged in the practice of



law.

5. Plaintiff PRS is informed, believes and thereon alleges that all times herein mentioned that Defendant MICHAEL J. AVENATTI is and was an attorney licensed by the State of California.

6. At all times herein mentioned, Defendant MICHAEL J. AVENATTI is and was a partner in the firm of EA.

7. At all times herein mentioned, Defendant MICHAEL J. AVENATTI was an actual employee and/or agent of Defendant EA.

8. At all times herein mentioned, Defendant MICHAEL J. AVENATTI was acting within the course and scope of his actual employment and/or agency with Defendant EA.

9. At all times herein mentioned, the conduct of Defendant MICHAEL J. AVENATTI was ratified by Defendant EA.

10. In or around July of 2010, Defendants MICHAEL J. AVENATTI and EA retained Plaintiff PRS to assist and act as local counsel in a civil lawsuit entitled *Koss Corporation v. Grant Thornton, LLP and Sujata Sachdeva*, filed in Cook County, Illinois, No. 10 L 7342 (hereinafter referred to as "the civil lawsuit").

11. The aforementioned civil lawsuit arose from an embezzlement by Koss Corporation senior officer Sujata Sachdeva between June 30, 2004 and June 30, 2008 and the negligence of Grant Thornton, LLP, in failing to detect this misconduct and informing its client Koss Corporation of the irregularities.

12. That Plaintiff PRS and Defendants EA and MICHAEL J. AVENATTI entered into a valid contract outlining the Contingent Fee Legal Services / Fee Sharing Agreement (hereinafter referred to as "the contract") regarding representation of Koss Corporation in its civil lawsuit against

Sujata Sachdeva and Grant Thornton, LLP. (See Attached Exhibit A, Contract Between Plaintiff and Defendants)

13. The contract provided for a contingency fee for legal services in the civil lawsuit to be between 28.0% to 33.3% of the gross settlement, verdict or judgment, depending on when the Lawsuit is resolved. (See Exhibit A)

14. The contract provided for the following fee sharing agreement between the Plaintiff and Defendants:

In the event the case is settled after one hundred twenty [120] days following the filing of the Lawsuit but before the first day of jury selection or the first day of arbitration, as applicable, EOA, as lead counsel, shall receive 80% of the Attorneys' Fees and PRS shall receive 20% of the Attorneys' Fees.

(See Exhibit A)

15. The contract further provided that [I]n the event PRS is required to perform significant legal work, arguments or become lead co-counsel, PRS shall receive 5% in addition to the 20% outlined above. (See Exhibit A)

16. The contract was signed by Michael Koss on behalf of Koss Corporation, Michael J. Avenatti on behalf of Defendant EA and Joseph A. Power, Jr. on behalf of Plaintiff PRS. (See Exhibit A)

17. The civil lawsuit entitled *Koss Corporation v. Sujata Sachdeva and Grant Thornton, LLC*, was filed in the Law Division of Cook County Circuit Court, Illinois on June 24, 2010 and given a Case Number of 10 L 7342. (See Exhibit B, Complaint at Law)

18. On August 11, 2010, the Honorable Lee Preston entered an *Order* allowing Defendant Michael J. Avenatti to appear, *pro hac vice*, before the Cook County Circuit Court in the case of *Koss Corporation v. Grant Thornton, LLP, et al.*, as co-counsel for Koss Corporation. (See

*Attached Exhibit C, Order Allowing Pro Hac Vice Appearance)*

19. On October 25, 2010, counsel for Grant Thornton, LLC filed a motion to dismiss based upon the doctrine of forum non conveniens. The issue was fully briefed.

20. On January 10, 2012, the Honorable Bill Taylor, after hearing oral argument from MICHAEL AVENATTI, granted Grant Thornton, LLC's motion and transferred the case to Wisconsin.

21. Koss Corporation filed its petition for leave to appeal to the First District Appellate Court on February 9, 2012.

22. The First District granted Koss Corporation's petition for leave to appeal on March 9, 2012.

23. Joseph A. Power, Jr., partner with Plaintiff PRS, argued the appeal in the First District.

24. On July 6, 2012, the First District Appellate Court reversed the lower court and remanded the case back to the Circuit Court of Cook County. (*See Exhibit D, Order of the Appellate Court*)

25. As a result of Joseph A. Power, Jr.'s argument in the First District Appellate Court, Defendants EA and MICHAEL J. AVENATTI added an additional 5% to the overall 20% fee that Plaintiff PRS was entitled to receive for its work on this case, as provided for within the contract for legal services. (*See Exhibit E, E-Mail Confirming the Additional 5% Fee to PRS*)

26. On July 1, 2013, the Honorable Frank Castiglione entered an *Order* dismissing the *Koss Corporation v. Grant Thornton, et al.*, case with prejudice, pursuant to settlement. (*See Exhibit F*)

27. That on July 1, 2013, the *Koss Corporation v. Grant Thornton, et al.*, case settled for

Eight Million Five Hundred Thousand Dollars [\$8,500,000.00].

**Count I**  
**(Breach of Contract)**

28. Plaintiff PRS realleges and incorporates by reference each and every allegation contained within Paragraphs 1 through 27 of the general allegations, as fully set forth herein.

29. Pursuant to the signed Contingent Fee Legal Services / Fee Sharing Agreement [Exhibit A], counsel contingency Koss Corporation was entitled to a minimum 28% Contingency Fee for its legal services in procuring and securing the settlement of \$8,500,000.00.

30. That the Contingent Fee Legal Services / Fee Sharing Agreement herein attached as Exhibit A, constituted a valid, legally binding contract between Koss Corporation, Plaintiff PRS and Defendants EA and MICHAEL J. AVENATTI.

31. That the Contingency Fee due to counsel for Koss Corporation was \$2,380,000.00, which represented 28% of \$8,500,000.00.

32. Pursuant to the Contingent Fee Legal Services / Fee Sharing Agreement [Exhibit A] and the confirming e-mail from Defendant MICHAEL J. AVENATTI [Exhibit E], Plaintiff PRS was entitled to 25% of the Contingency Fee or \$595,000.00.

33. That on October 14, 2013, Defendants EA and MICHAEL J. AVENATTI sent Plaintiff PRS a check in the amount of \$338,750.00, which Defendants maintained was Plaintiff's share of the contingency fee for legal services in the *Koss Corporation v. Grant Thornton, LLC., et al.*, case. (See Exhibit F)

34. That at all times prior to October 14, 2013, Defendants never obtained consent from Plaintiff PRS to reduce the contingency fee for legal services prior to issuing the check for \$338,750.00.

35. That at all times prior to October 14, 2013, Defendants failed to inform Plaintiff PRS that it was allegedly reducing the contingency fee for legal services prior to issuing the check for \$338,750.00.

36. That Defendants' failure to issue Plaintiff PRS a check representing Plaintiff's contractually agreed upon term of 25% of the 28% contingency fee form legal services represented a material violation of the contractual terms.

37. That Defendants' material violation of the agreed upon contractual terms served to shortchange Plaintiff PRS \$256,250.00.

38. That Defendants are currently being sued in the Superior Court of California, County of Orange regarding allegations that they converted and stole attorney fees due to associating attorneys.

WHEREFORE, Plaintiff POWER ROGERS & SMITH, P.C., hereby demand judgment in the amount of Two Hundred Fifty-Six Thousand Two Hundred Fifty Dollars [\$256,250.00] plus costs and attorney fees, which represents fair compensation for the material breach of contract alleged herein.

**Count II**  
**(Conversion of Property)**

39. Plaintiff PRS realleges and incorporates by reference each and every allegation contained within Paragraphs 1 through 38, as fully set forth herein.

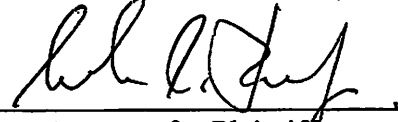
40. That the \$256,250.00 which Defendants shortchanged Plaintiff PRS on its fee for legal services, represented tangible property belonging to Plaintiff PRS.

41. That Defendants EA and MICHAEL J. AVENATTI, in failing to pay Plaintiff PRS its contractually agreed upon amount for attorney fees for legal services, converted \$256,250.00

of Plaintiff's property for its personal use.

WHEREFORE, Plaintiff POWER ROGERS & SMITH, P.C., hereby demand judgment in the amount of Two Hundred Fifty-Six Thousand Two Hundred Fifty Dollars [\$256,250.00] plus costs and attorney fees, which represents fair compensation for the conversion of Plaintiff's property alleged herein.

POWER ROGERS & SMITH, P.C.

By:   
Attorney for Plaintiff

Joseph A. Power, Jr.  
Thomas G. Siracusa  
Sean M. Houlihan  
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AFFIDAVIT

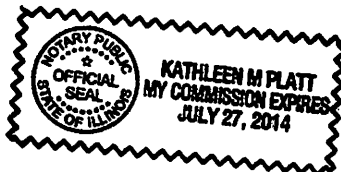
NOW comes Affiant, Sean M. Houlihan, and being first duly sworn on oath,  
deposes and states:

1. That he is one of the attorneys representing plaintiff in the above cause of action.
2. That he is familiar with the facts in the above cause.
3. That he has reviewed the available information relating to the money damages in the above matter.
4. That based upon information and belief, the total money damages sought in the above cause are worth in excess of Fifty Thousand Dollars (\$50,000.00).

  
Sean M. Houlihan

Subscribed and sworn to before me  
this 7th day of April, 2014

  
Notary Public



Sean M. Houlihan  
POWER ROGERS & SMITH #31444  
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312-236-9381  
Attorneys for Plaintiff